

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT J. ALEXANDER,
Plaintiff,

v.

TARGET INCORPORATED, et al.,
Defendants.

Case No. [19-cv-07492-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a detainee, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the
3 elements of a cause of action will not do. . . . Factual allegations must be enough to
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal
8 conclusions can provide the framework of a complaint, they must be supported by factual
9 allegations. When there are well-pleaded factual allegations, a court should assume their
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **LEGAL CLAIMS**

17 Plaintiff alleges that his rights were violated when he was detained at a Target
18 retail store.

19 A private individual does not act under color of state law, an essential element of a
20 § 1983 action. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Purely private conduct,
21 no matter how wrongful, is not covered under § 1983. *See Ouzts v. Maryland Nat'l Ins.*
22 *Co.*, 505 F.2d 547, 550 (9th Cir. 1974). Simply put: There is no right to be free from the
23 infliction of constitutional deprivations by private individuals. *See Van Ort v. Estate of*
24 *Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996).

25 Action taken by private individuals or organizations may be under color of state
26 law "if, though only if, there is such a close nexus between the State and the challenged
27 action that seemingly private behavior may be fairly treated as that of the State itself.
28 What is fairly attributable is a matter of normative judgment, and the criteria lack rigid

1 simplicity. . . . [N]o one fact can function as a necessary condition across the board for
2 finding state action; nor is any set of circumstances absolutely sufficient, for there may be
3 some countervailing reason against attributing activity to the government.” *Brentwood*
4 *Academy v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295-96 (2001)
5 (internal quotation marks omitted). “Even facts that suffice to show public action (or,
6 standing alone, would require such a finding) may be outweighed in the name of some
7 value at odds with finding public accountability in the circumstances.” *See id.* at 303.

8 Plaintiff alleges that loss prevention staff at a Target retail store tackled him and
9 then detained him without reading him his *Miranda* rights, they handcuffed him, denied him
10 an attorney and access to his medication and a restroom. As currently plead, plaintiff
11 fails to state a claim pursuant to 42 U.S.C. § 1983. The defendants were not state
12 actors, rather they were employees at a retail store and plaintiff has not shown they were
13 acting under color of state law. While plaintiff could seek relief in state court, he has not
14 set forth a claim for relief in this court. Plaintiff has also named the police department as
15 a defendant but there are no allegations against any individual officer.¹ The complaint is
16 dismissed with leave to amend to provide more information and state a federal claim.

17 CONCLUSION

18 1. The complaint is **DISMISSED** with leave to amend in accordance with the
19 standards set forth above. The amended complaint must be filed no later than **January**
20 **6, 2020** and must include the caption and civil case number used in this order and the
21 words AMENDED COMPLAINT on the first page. Because an amended complaint
22 completely replaces the original complaint, plaintiff must include in it all the claims he
23 wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may
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25 ¹ Plaintiff is also informed that in order to recover damages for an allegedly
26 unconstitutional conviction or imprisonment, or for other harm caused by actions whose
27 unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff
28 must prove that the conviction or sentence has been reversed on direct appeal,
expunged by executive order, declared invalid by a state tribunal authorized to make
such determination, or called into question by a federal court’s issuance of a writ of
habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994).

1 not incorporate material from the original complaint by reference. Failure to file amended
2 complaint may result in dismissal of this action.

3 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
4 court informed of any change of address by filing a separate paper with the clerk headed
5 "Notice of Change of Address," and must comply with the court's orders in a timely
6 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
7 pursuant to Federal Rule of Civil Procedure 41(b).

8 **IT IS SO ORDERED.**

9 Dated: December 4, 2019

10
11 /s/ Phyllis J. Hamilton

12 PHYLLIS J. HAMILTON
13 United States District Judge
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